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20 Attorneys for Plaintiff
21 Glacier Northwest, Inc.

22 **UNITED STATES DISTRICT COURT**
23 **WESTERN DISTRICT OF WASHINGTON**

24 GLACIER NORTHWEST, INC.,

25 Case No.

26 Plaintiff,

27 **COMPLAINT FOR:**

28 **1) DECLARATORY JUDGMENT;**
2) BREACH OF CONTRACT.

29 CEMENTAID INTERNATIONAL
30 MARKETING, LTD.,

31 **DEMAND FOR JURY TRIAL**

32 Defendant.

33 **GENERAL ALLEGATIONS**

34 **Jurisdiction and Parties**

35 1. This Court has original jurisdiction over this matter, pursuant to
36 28 U.S.C. § 1332, because there is complete diversity of citizenship between the
37 Plaintiff and the Defendant and there is more than \$75,000 in controversy.

38 Complaint

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1 2. Pursuant to the contract between the parties, as more fully described
 2 below, each of the parties explicitly consented to the jurisdiction of the United States
 3 District Court for the Western District of Washington.

4 3. Plaintiff, Glacier Northwest, Inc. (“Glacier Northwest”), is a
 5 corporation organized and existing under the laws of the State of Washington.
 6 Plaintiff Glacier Northwest is a wholly owned subsidiary of CalPortland Company,
 7 with a principal place of business in the State of California.

8 4. Defendant, Cementaid International Marketing Ltd. (hereinafter
 9 “CAIM”), is a Hong Kong Company, with a principal place of business in Hong
 10 Kong.

11 5. The Parties entered into a written “Marketing and Material Supply
 12 Agreement” (“Agreement”) effective December 31, 2001. Pursuant to the
 13 Agreement Glacier Northwest was the exclusive distributor of certain concrete
 14 related products within a specified geographic area. As relevant herein, the list of
 15 products included Caltite and the geographic territory included California.

16 6. Central Concrete purchased Caltite, a waterproofing additive, from
 17 Glacier Northwest. Central Concrete used those products in various construction
 18 projects including one known as Millennium Tower, which is located in San
 19 Francisco, California.

20 7. Several lawsuits, related to the development of the Millennium Tower,
 21 are now pending in the California Superior Court, for the County of San Francisco.
 22 One of those lawsuits is entitled *Millennium Tower Association v. Mission Street*
Development, LLC et al, case number 17-557830. That lawsuit alleges numerous
 23 problems with the condition of the Millennium Tower including, but not limited to,
 24 water intrusion through foundation systems and slabs.

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28 Complaint

1 8. A cross-complaint was subsequently filed in that action by Webcor
2 Construction LP. Glacier Northwest is named as a cross-defendant in the Webcor
3 cross-complaint. Glacier Northwest is informed and believes that its only
4 relationship to Webcor, as it relates to the Millennium Towers, is the sale of CAIM's
5 product to Central Concrete which subsequently utilized that product in concrete
6 work at the Millennium Tower.

7 9. Pursuant to the Agreement, CAIM agreed to defend, indemnify and hold
8 Glacier Northwest harmless from and against any product liability claims related to
9 the CAIM products.

10 10. On February 22, 2018, March 20, 2018, and March 22, 2018, Plaintiff
11 sent letters to CAIM demanding that CAIM honor its contractual obligation to
12 indemnify Glacier Northwest, but CAIM has failed and refused to do so.

13 11. Glacier Northwest has been required to retain counsel to defend the
14 Webcor cross-complaint, the cost of which has already exceeded the \$75,000
15 jurisdictional threshold for diversity jurisdiction and such damages are continuing
16 and increasing.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT

19 12. Plaintiff realleges and incorporates by reference, as though set forth in
20 full, paragraphs 1 through 11 of this Complaint.

21 13. Glacier Northwest has already incurred significant costs of defense in
22 relation to *Millennium Tower Association v. Mission Street Development, LLC et al*,
23 which defense costs are continuing. Glacier Northwest may also be obligated to pay
24 the costs of a settlement or a judgment

14. CAIM has failed and/or refused to acknowledge its obligation to
 2 indemnify Glacier Northwest, both for amounts already incurred and for amounts
 3 which will be incurred in the future.

4 15. There is an actual and present controversy between Glacier Northwest
 5 and CAIM regarding the indemnification of Glacier Northwest under the terms of the
 6 Agreement such that this Court should issue a declaratory judgment in favor of
 7 Glacier Northwest, and against CAIM, finding that CAIM is obligated to defend and
 8 indemnify Glacier Northwest for the past, present and future costs of defense in the
 9 Millennium Tower Suit in addition to any amounts which Glacier Northwest is
 10 obligated to pay for a settlement or judgment.

11 **SECOND CLAIM FOR RELIEF**

12 **BREACH OF CONTRACT**

13 16. Plaintiff realleges and incorporates by reference, as though set forth in
 14 full, paragraphs 1 through 11 of this Complaint.

15 17. Since as early as February 22, 2018 and thereafter, CAIM has been in
 16 breach of the Agreement by failing and refusing, and continuing to fail and refuse, to
 17 pay Glacier Northwest for ongoing reasonable and necessary amounts incurred by
 18 Glacier Northwest in defense of the Millennium Tower Suit.

19 WHEREFORE, Plaintiff prays for judgment as follows:

20 ON THE FIRST Claim for Relief:

21 1. For a Declaratory Judgment in favor of Plaintiff and against Defendant
 22 on every issue properly brought before this Court.

23 2. Such other and further Declaratory Judgment as may appear proper at
 24 the time of determination.

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28 Complaint

1 ON THE SECOND Claim for Relief:

2 3. For all amounts incurred by Plaintiff which amounts Defendant has
3 agreed to pay to or on behalf of Plaintiff under the Agreement.

4 4. For interest on sums which were not timely paid to Plaintiff.

5 5. For all other damages incurred by Plaintiff as a result of any breach of
6 contract.

7 ON ALL Causes of Action:

8 6. For interest on all sums where properly owed.

9 7. For costs of suit incurred herein.

10 8. For such other and further relief as the court may deem just.

11 DATED: April 16, 2018

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2 **DEMAND FOR JURY TRIAL**
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4 Plaintiff Glacier Northwest hereby demands trial by jury as to each and every
5 issue as to which it is entitled to demand a jury.
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